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United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination
New York, 27-31 March and 15 June-7 July 2017
Agenda item 8 (b)
General exchange of views: general exchange of views on all matters

Need for a verification mechanism at this stage for a treaty prohibiting nuclear weapons

Submitted by Chile, Sweden and Uganda

1. Verification is a key aspect of all credible arms control, disarmament and non-proliferation agreements.

2. Verification needs to be relevant and focused on the key issues of the agreement. These will vary depending on the coverage of the agreement and the characteristics of the participating States.

3. Verification needs to be cost-effective and should not replace existing verification activities and agreements.

4. For a nuclear weapons disarmament convention that would include States with nuclear weapons, a new comprehensive control mechanism would need to be designed and set up. Some nuclear-weapon States have accumulated experience in this matter through the development and implementation of bilateral nuclear disarmament or arms control agreements. Apart from those States, the experience and expertise necessary to develop such mechanisms do not exist at this time, even though some States are making progress in projects such as the International Partnership for Nuclear Disarmament Verification and are exploring the conditions necessary to carry out nuclear disarmament verification.

5. For a treaty prohibiting nuclear weapons, such levels of verification would not be necessary in the first phases unless States with nuclear weapons participated, which appears highly unlikely at this time. Verification could be developed and negotiated at a later stage as a separate annex, involving States with nuclear weapons in the process.

6. There is, however, a need for some form of verification system to ensure that States without nuclear weapons signing up to the treaty abide by their commitments.

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7. To verify the ban on chemical weapons imposed under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, a new organization had to be created, the Organization for the Prohibition of Chemical Weapons. Similarly, with regard to the verification of the ban on nuclear tests, the Comprehensive Nuclear-Test-Ban Treaty Organization was established. For a treaty banning nuclear weapons, the options appear to be either expanding the existing mandate of the International Atomic Energy Agency (IAEA), which is the organization tasked with verifying nuclear non-proliferation and which has extensive expertise and experience in the relevant areas, or setting up an entirely new organization.

8. Given the need for cost-effectiveness and the unnecessity of duplicating existing efforts, our position will probably be to formally expand the verifying mandate of IAEA when the time comes to verify a prohibition on nuclear weapons involving States possessing such weapons.

9. To provide the cost-effective verification capacity needed at this phase of the proposed treaty prohibiting nuclear weapons, we strongly believe that we should use existing instruments.

10. For the object and purpose of the treaty, what would be needed is a safeguards conclusion that all nuclear material has been used for peaceful activities in a State. This would be based on the IAEA finding that there are no indications of diversion of declared nuclear material from peaceful nuclear activities and no indications of undeclared nuclear material or activities in a State as a whole. IAEA draws such a conclusion only where a State has both a comprehensive safeguards agreement and an additional protocol in force. The verification provided through comprehensive safeguards (INFCIRC/153) alone will not provide sufficient assurances for a treaty prohibiting nuclear weapons.

11. We argue, therefore, that States also need to be a party to the Protocol Additional to the Agreements between States and the International Atomic Energy Agency for the Application of Safeguards, known as the "1997 Additional Protocol" (INFCIRC/540), especially as the treaty is likely to include a ban on development, which necessitates access to information at an early stage of a programme in order for IAEA to be able to verify that a State party is not violating the treaty. Access to such information can be guaranteed only through the Additional Protocol.

Conclusions

12. The treaty prohibiting nuclear weapons to be negotiated should contain legally binding commitments upon States parties to enter into agreements with IAEA based on the model Additional Protocol provided in INFCIRC/540. In this regard:

(a) It would provide the international community with the necessary assurances that States committing themselves to a ban on nuclear weapons are not carrying out activities that would be in violation of those commitments;

(b) It would strengthen the credibility of and respect for the treaty;

(c) It would make use of IAEA capacity and expertise and leave the question of verification of actual disarmament of nuclear weapons and related capacity open for the time being;

(d) With 129 States already having committed themselves to such a protocol with IAEA, the increased burden on States would be limited;

(e) By providing IAEA with access to all facilities in a State party, the Additional Protocol goes further and provides better assurances than what can be

achieved under complementary verification systems such as comprehensive safeguards (INFCIRC/153);

(f) It would allow for equal treatment and obligations for all States parties to the treaty, ensuring that no State would receive preferential treatment when it came to the verification of obligations undertaken under a treaty intended to be a global instrument.

Text proposal

13. Possible text for such an article is provided below.

Article [ ]

1. [In order to ensure verification of commitments entered into under this treaty,] [In order to ensure commitments under article/s [ ],] a State Party to this treaty, if it has not done so, shall conclude with the International Atomic Energy Agency an agreement for the application of safeguards in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons (INFIRC/153) and an Additional Protocol (INFCIRC/540), no later than 12 months after the entry into force of this treaty for the State Party.

2. A State Party that fails to enter into such agreements within the stipulated time frame of 12 months shall, through the depositary [the Secretary-General of the United Nations], provide all States Parties with detailed information as to why the State Party concerned has failed in this treaty obligation and also information on how the State Party will rectify the situation, including when such agreements will be entered into.

14. Depending on whether a compliance mechanism is included in the treaty and how it is structured, language may be included such that if the situation of non-compliance persists States parties may bring the matter to that mechanism. This could be defined in a third paragraph of the proposed article.